

STATE OF MICHIGAN
COURT OF APPEALS

In re HUBBARD, Minors.

UNPUBLISHED
April 19, 2016

No. 328872
Wayne Circuit Court
Family Division
LC No. 13-514247-NA

Before: JANSEN, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (other conditions exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to parent), and terminating the parental rights of the unknown fathers under MCL 712A.19b(3)(a)(i) (parent is unidentifiable). We affirm.

Respondent first argues that petitioner failed to make reasonable efforts to rectify the conditions causing removal and reunite respondent with her children. We disagree.

A respondent must object or otherwise indicate that the services provided by the petitioner are inadequate in order to preserve this issue for appellate review. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). “ ‘The time for asserting the need for accommodation in services is when the court adopts a service plan’ ” *Id.* (citation omitted). In this case, although respondent testified that she believed that additional services could have been provided to her, respondent’s attorney did not raise an objection or otherwise indicate that the services were inadequate at the time that the court adopted the service plan or at any other time during the proceedings. Therefore, the issue is unpreserved. See *id.*

We generally review a trial court’s finding that reasonable efforts were made to preserve the family and reunify it for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). However, since respondent did not object in the trial court, we review the issue for plain error affecting respondent’s substantial rights. See *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009).

When a child is removed from the parent, petitioner is required to make reasonable efforts to rectify the conditions causing removal, reunite the family, and avoid termination of parental rights. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). This includes the

adoption of a service plan. *In re Fried*, 266 Mich App at 542. “While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App at 248. Reasonable efforts must be made in all cases unless the case involves aggravated circumstances. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This case does not involve aggravated circumstances. See MCL 712A.19a(2).

Before the court enters an order of disposition, the DHS must prepare a case service plan, which must include, among other things, a “[s]chedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child’s return to his or her home or to facilitate the child’s permanent placement.” [*In re Mason*, 486 Mich at 156 (citation omitted; alteration in original).]

The court must consider at each review hearing whether the respondent complied with the case service plan. *Id.* “ [A] court may not terminate parental rights on the basis of ‘circumstances and missing information directly attributable to [the] respondent’s lack of meaningful prior participation.’ ” *Id.* at 159-160 (citation omitted).

Petitioner engaged in consistent reasonable efforts to rectify the conditions leading to removal and reunify the children with respondent. The parent-agency agreement stated that the foster-care worker would make any necessary service referrals and maintain contact with respondent. Respondent was ordered to comply with the service plan, attend parenting classes, attend individual and family counseling, attend mental health services, participate in random drug screens, maintain suitable housing, obtain a legal source of income, visit with the children on a regular basis, maintain regular contact with the case worker, cooperate with petitioner, and obey all court orders. The court ordered petitioner to provide a parent-partner and bus tickets.

Throughout the proceedings, petitioner referred respondent for appropriate services to address the issues outlined in the service plan and parent-agency agreement. Respondent completed a psychological examination and a Clinic for Child study. She was referred for parenting classes on three separate occasions. Respondent was referred for a psychiatric evaluation three times. Respondent’s foster-care worker referred respondent for individual counseling when respondent did not sign a release with regard to the mental health services respondent stated that she was receiving. Respondent eventually completed a medical release allowing her foster-care worker to review her medical records.

It is unclear what actions petitioner took in relation to respondent’s job search. However, respondent was enrolled in programs with regard to her job search during the pendency of the case. Respondent does not argue that petitioner failed to refer her for services with regard to her job search. Respondent was provided with bus tickets. Although respondent indicated that the bus tickets often disappeared, there is no indication that petitioner caused the bus tickets to go missing or that petitioner could have taken any additional actions to ensure that the tickets did not go missing. Respondent’s case workers also arranged weekly visitations between respondent and the children.

Respondent's case workers made referrals for housing. Respondent's parent-partner also aided respondent with housing. Respondent had difficulty securing housing during the proceedings, and respondent argues in her brief on appeal that more individual assistance with regard to housing would have aided her in securing housing. However, petitioner met its burden with regard to the housing requirement by making referrals for housing. Respondent fails to explain what additional actions petitioner should have taken and how the referrals were inadequate. She notes that she did not always receive the communications from the agency workers or e-mails containing housing information. However, respondent fails to explain how the fact that she did not receive communications from agency workers is the fault of petitioner. Additionally, there is no indication that respondent informed her caseworker that she was not receiving information regarding housing.

During the January 7, 2014 hearing, respondent's case worker acknowledged that she failed to provide a parent-partner and stated that she would do so that day. After the hearing, respondent worked with a parent-partner until the service was terminated for lack of participation sometime before the February 5, 2015 hearing. Respondent's case worker believed that respondent maintained a relationship with her parent-partner throughout the remainder of the case. The short period in which the case worker neglected to refer respondent to a parent-partner did not rise to the level of a failure to make reasonable efforts to rectify the conditions leading to adjudication and reunify the family considering that the parent-partner was only one service out of many, and respondent was referred for the service immediately after the first dispositional review hearing.

In contrast to the efforts expended by the case workers, respondent failed to participate in the services offered to her. See *In re Frey*, 297 Mich App at 248. As discussed in detail below, respondent failed to obtain housing, secure a legal source of income, or adequately address her mental health problems. Services were terminated for a lack of participation. Respondent failed to maintain consistent contact with her case worker. She also failed to take advantage of approximately half of her visitations with her children. Thus, respondent failed to participate in the services that were offered to her. See *id.*

Respondent argues that this case is similar to *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled on other grounds by *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013), which she argues stands for the proposition that her rights were prematurely terminated. However, this case differs from *Boursaw* since the respondent in *Boursaw* made "significant strides" toward remedying the conditions that led to removal, including obtaining employment, proper housing, transportation, and therapy. *In re Boursaw*, 239 Mich App at 173-176. The respondent also consistently attended visitations. *Id.* at 174. In contrast, respondent did not make significant strides toward compliance with her treatment plan. She did not obtain employment or adequate housing, she failed to visit with the children on a regular basis, and she was not in full compliance with the services designed to address her mental health conditions. Therefore, we conclude that petitioner made reasonable efforts to rectify the conditions that led to adjudication, reunify the family, and prevent termination of respondent's parental rights.

Respondent next argues that the trial court erred in finding that statutory grounds for termination were established by clear and convincing evidence. We disagree.

We review for clear error a trial court's factual findings and its ultimate determinations regarding the statutory grounds for termination. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake." *Id.* at 709-710.

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). MCL 712A.19b(3)(c)(i) provides that the court may terminate the respondent's parental rights if it finds by clear and convincing evidence that "[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order," and "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

The trial court did not err in finding that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence. The parent in this case was a respondent in a termination proceeding, and more than 182 days elapsed between the initial disposition order and the termination decision. In addition, the conditions that led to adjudication continued to exist, and there was no reasonable likelihood that the conditions would have been rectified within a reasonable time considering the young ages of the children. The conditions leading to adjudication were improper supervision and failure to protect due to the fact that respondent resided with Lamar Williams, who was a man with a history of sexual abuse against children, and because of respondent's failure to maintain adequate housing. Additionally, the court required respondent in its disposition to comply with the service plan, which required that respondent obtain mental health services and a legal source of income. Respondent failed to rectify the conditions that led to adjudication, and she failed to maintain consistent compliance with her service plan. Although respondent denied that she maintained contact with Williams, her case worker was unsure whether respondent was still in contact with Williams. Respondent's attorney noted during one hearing that Williams was in jail and that respondent does not have contact with him. However, there was evidence that respondent continued to believe that Williams did not sexually assault anyone. Thus, although the record indicates that respondent's relationship with Williams dwindled during the case, respondent's failure to acknowledge the dangers that Williams posed to her children shows that the condition that led to adjudication continued to exist.

In addition, respondent failed to obtain adequate housing. Before the termination hearing, respondent informed her current case worker that she had moved into a new home, but she did not schedule a home assessment before the hearing and informed the case worker that "she was just working on a few more things and then she would let [the case worker] come out." Respondent failed to substantiate her claim by sending the case worker a lease or providing any additional evidence that she obtained adequate housing. Respondent was in jail during the July 21, 2015 termination hearing, and she anticipated that it would take her six months or less to obtain housing. However, there was no indication that respondent was any closer to obtaining housing than she was at the beginning of the case. Thus, this condition that led to adjudication continued to exist. Respondent also failed to obtain a legal source of income, which was also

required as part of her parent-agency agreement. Although respondent applied for supplemental security income, she did not provide proof that her application was accepted.

The referee emphasized when rendering her decision respondent's failure to comply with her mental health treatment. Respondent had mental health conditions that required ongoing treatment. However, respondent failed to demonstrate consistent compliance with her mental health treatment. Respondent did not complete therapy. Services for individual therapy were terminated when respondent failed to comply. Respondent eventually began participating in therapy in May 2015, but she did not complete the program. Respondent would have to be referred for the program again since she was in jail at the time of the July 21, 2015 termination hearing, and respondent's case worker explained that respondent would have to be rereferred for services. In addition, there was testimony that respondent was not taking her medications or going to medication reviews. Respondent was terminated from services with regard to her medication in January 2015, and the case worker did not believe that respondent began the services again. In March or April 2015, respondent showed her case worker a prescription bottle dated October 2014, but she failed to provide the case worker with any evidence that she was taking the medication or participated in any medication reviews.

Furthermore, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's young ages. Respondent had almost two years to rectify the conditions, and she failed to provide proof of adequate housing, a legal source of income, or compliance with treatment for her mental health conditions before the termination hearing. Although there were times that respondent was compliant with portions of her treatment plan, respondent would consistently fall out of compliance. She also did not maintain consistent contact with her case workers to provide updates on her progress. Respondent was incarcerated at the time of the final termination hearing and would need to be rereferred for services upon her release approximately one month after the hearing. Thus, even the services for which respondent was participating were terminated when she went to jail. The trial court, therefore, did not err in finding that MCL 712A.19b(3)(c)(i) was a proper statutory ground for termination. See *In re Laster*, 303 Mich App 485, 493; 845 NW2d 540 (2013) (holding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence when the respondent mother failed to obtain safe and suitable housing during the two years that the children were in the temporary custody of the court).

MCL 712A.19b(3)(c)(ii) provides that the court may terminate the respondent's parental rights if it finds by clear and convincing evidence that "[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order," and

[o]ther conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Petitioner concedes in its brief on appeal that MCL 712A.19b(3)(c)(ii) was not a proper basis for termination of respondent's parental rights. We agree that the record does not contain factual support for the court's finding that MCL 712A.19b(3)(c)(ii) was a statutory ground for termination. However, in spite of the fact that both parties agree that the trial court improperly found that MCL 712A.19b(3)(c)(ii) was a statutory ground for termination, only one statutory ground must be met by clear and convincing evidence in order for the court to terminate a respondent's parental rights. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Thus, since the court properly terminated respondent's parental rights under other statutory grounds, the error is harmless. See *id.*

MCL 712A.19b(3)(g) provides that the court may terminate the respondent's parental rights if it finds by clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Respondent failed to provide proper care and custody for the children when she continued to live with Williams and her children after learning that Williams had a history of sexual abuse toward children, and when she failed to provide the children with stable housing. Respondent also lacked a source of income and had ongoing mental health problems, which she failed to address. There was no reasonable likelihood that respondent would be able to provide proper care and custody within a reasonable time considering the young ages of the children. The children were in care for almost two years at the time of the final termination hearing. During that time, respondent did not locate a source of income, and although she told her case worker that she had housing, she did not permit the case worker to assess the house. Respondent also did not provide her case worker with proof that she was taking her prescribed medications, and respondent's case worker testified that respondent was not attending medication reviews. Furthermore, as noted above, respondent needed to be rereferred for services when she was released from jail. Finally, respondent attended less than half of the scheduled visits with her children, and there was evidence that she did not demonstrate proper parenting skills during at least one visit when she grabbed NMAH by the shirt. Thus, the trial court did not err in finding by clear and convincing evidence that respondent failed to provide proper care or custody and that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the young ages of the children. See MCL 712A.19b(3)(g).

Finally, MCL 712A.19b(3)(j) provides that the court may terminate the respondent's parental rights if it finds by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

The trial court did not err in finding by clear and convincing evidence that there was a reasonable likelihood, based on the conduct of respondent, that the children would be harmed if they were returned to respondent's home. As discussed above, respondent failed to obtain a legal source of income and adequate housing during the time that the children were in care. She did not completely address her mental health issues as she failed to show proof that she was taking her medications on a regular basis, and her medical records indicated that she was not.

Although respondent showed her case worker a prescription bottle dated October 2014 in March 2015 or April 2015, the case worker did not have any other evidence that respondent was taking her medications. For these reasons, the trial court did not err in determining that there was a reasonable likelihood that the children would be harmed if returned to respondent's home. See MCL 712A.19b(3)(j).

Respondent next argues that the trial court erred in finding that termination was in the best interests of the children. We disagree.

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). We review for clear error a trial court's decision regarding the best interests of the children. *In re White*, 303 Mich App at 713.

A trial court weighs all available evidence in determining whether termination is in the best interests of the child. *In re White*, 303 Mich App at 713.

To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include “the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.” [*Id.* (citation omitted).]

“The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption.” *Id.* at 714.

Respondent argues on appeal that the court failed to weigh the bond between her and her children and that there was inadequate evidence on the record for the court to make a proper best-interest finding. Respondent refers to the factors outlined above and argues that the court was required to consider the bond between her and her children since this was an important factor in the case. However, respondent misinterprets this Court's holding in *White*. This Court held that the trial court “should weigh all the evidence available” in determining best interests and that “the court should consider a wide variety of factors *that may include*” the bond between the child and the parent. *In re White*, 303 Mich App at 713 (emphasis added). The trial court is not required to consider on the record each factor outlined in *White*, but is instead required to examine all of the evidence in the case and make a decision based on the factors that are applicable in the particular case. See *id.*

The referee report and recommendation, which was approved by the trial court, notes that “there is no significant parental bond” between respondent and the children. There is minimal testimony regarding the bond between respondent and her children. A November 2014 order reflected that respondent was “very bonded” to the children. During the July 2015 termination hearing, one of respondent's case workers testified that respondent seemed to be bonded to her children and that she “would think” that there remained a bond between respondent and her children. Respondent also testified that there was a bond between herself and her children.

Respondent attended 40 visits out of 87 scheduled visits, and her last visit with her children was on May 26, 2015, which was two weeks before the termination hearing began. The record therefore reveals that there was a bond between respondent and her children, though the strength of the bond at the time of termination is unclear.

However, respondent's bond with the children was only one factor that the referee mentioned in her report and recommendation, and the referee did not emphasize this factor when rendering her decision. In *In re White*, 303 Mich App at 714, this Court rejected the respondent's argument that the court erred in finding that termination was in the best interests of her children since she shared a strong bond with them. This Court explained that the bond was only one factor that the trial court considered, and the trial court emphasized other factors. *Id.* Thus, this Court was not convinced based on the record in the case that the trial court made a mistake in finding that termination was in the best interests of the children. *Id.* Similarly, in this case, the bond between respondent and her children was only briefly mentioned in the referee report and recommendation, and the referee emphasized other factors when rendering her decision.

The trial court did not clearly err in determining that termination was in the best interests of the children. Respondent failed to demonstrate adequate parenting ability. The referee explained during the termination hearing that respondent failed to visit the children for over half of the visits since it was too painful for her to attend. Thus, the referee found that respondent was more concerned with her own feelings than the feelings of her children. Furthermore, respondent did not complete a second recommended set of parenting classes. There was also evidence that respondent did not benefit from her parenting classes. Respondent's case worker testified that another caseworker reported that respondent yelled at NMAH during one visit and grabbed the front of NMAH's shirt. When the caseworker attempted to correct respondent's behavior, respondent stated, "You can't tell me what the F to do with my children." There was also testimony that respondent did not pay attention to the two girls during visits, and sometimes MSH remained in his car seat.

Additionally, as discussed earlier in this opinion, respondent failed to comply with various components of her case service plan and the order of disposition, including obtaining housing, securing a source of legal income, complying with mental health treatment, maintaining regular visitations with the children, and maintaining contact with the case worker. Furthermore, the evidence supported the finding that termination promoted stability, permanency, and finality. Respondent's case worker testified that she believed that termination was in the best interests of the children so that they may achieve stability in their lives. The testimony presented at the termination hearings supports the referee's finding that the caregivers were willing to plan for the children and that the children would benefit from a permanent connection to the caregivers. The children were placed with relative caregivers. Respondent's case worker testified that the caregivers of the children were interested in adopting the children if respondent's parental rights were terminated. Respondent's case worker also noted that it was in the best interests of NMAH and LSH for respondent's parental rights to be terminated in order to provide the girls with consistency. She explained that the maternal grandfather did "an amazing job" with the two girls and that the girls "would be really well suited" to remain in his care. Thus, the testimony supported the finding that the relatives were willing to plan for the children and that the children shared a strong bond with their caregivers.

Finally, the trial court properly considered the best interests of the children in light of their placement with relatives. NMAH and LSH were placed with their maternal grandfather. MSH was placed with a maternal cousin. It is unclear whether the maternal cousin was a “relative” under the meaning of the term in MCL 712A.19a(6)(a) since the degree of affinity between the child and the cousin is unknown. See MCL 712A.13a(1)(j) (defining the term “relative” as including persons who are related to the child as “first cousin or first cousin once removed”). However, assuming, as respondent argues, that all the children were placed with relatives, the trial court correctly considered on the record that the children’s placement with relatives weighs against termination.

The fact that a child resides with relatives weighs against termination. *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). The court must consider the fact that a child lives with relatives when making its termination decision. *Id.*

Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child’s best interests, the fact that the children are in the care of a relative at the time of the termination hearing is an “explicit factor to consider in determining whether termination was in the children’s best interests.” [*Id.* (citations omitted).]

“A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.” *Id.* Here, the referee considered when rendering her decision that the children were placed with relatives and that placement with relatives usually weighs against termination, and the opinion notes that the termination decision was in the best interests of the children in spite of their placement with relatives. Thus, the trial court properly considered the children’s placement with relatives. See *id.* at 43-44.

Respondent also argues that the trial court did not properly consider the best interests of each child individually. Recently, this Court clarified that “if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children’s best interests.” *In re White*, 303 Mich App at 715. However, the court need not make explicit factual findings with regard to each individual child if the best interests of the children do not significantly differ. See *id.* at 716. In this case, the referee did discuss the individual differences in the situations of the children when rendering her decision. She noted that NMAH was more agitated after she visited with respondent and that she acted aggressively when respondent missed visitations. The referee also noted that MSH was placed with a maternal cousin and that the two girls were placed with their maternal grandfather. There is no indication that the best interests of the children differed in any other respect. Thus, the court did not need to make any additional individual factual determinations with regard to each child. See *id.* For the reasons discussed above, the trial court properly found that termination was in the best interests of the children.

Affirmed.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Kelly